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### C&M Investment Group, Ltd. v. Campbell Appellant's Brief Dckt. 44719

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IN THE SUPREME COURT OF THE STATE OF IDAHO

C&M INVESTMENT GROUP, LTD., and  
KARLIN HOLDINGS LIMITED  
PARTNERSHIP,

Plaintiffs/Petitioners/Respondent,

NEIL DAVID CAMPBELL, individually,

Defendant/Respondent/Appellant

and

PHILIP RICHARD POWERS, individually;  
POWERS INVESTMENTS AND  
MANAGEMENT, INC., S.A., a  
corporation; GUANANA GRIS, S.A., a  
corporation; PROTECCION FORESTAL  
DE TECA, S.S., A corporation; and DOES 1  
through 50 inclusive,

Defendants.

SUPREME COURT NO. 44719

APPELLANT'S BRIEF

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the  
County of Blaine.

Honorable Robert J. Elgee, District Judge, Presiding.

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**II.  
TABLE OF CASES AND AUTHORITIES**

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**III.  
STATEMENT OF THE CASE**

This case addressed a contempt of court case involving 10 counts of civil contempt of court and 24 counts of criminal contempt of court. (R., p. 29 through 49 of 636) C&M Investment Group, LTD., (hereinafter “C&M”) and Karlin Holdings Limited Partnership (hereinafter “Karlin”) pursued the counts of civil contempt of court and criminal contempt of court against Neil Campbell (hereinafter “Campbell”). The criminal contempt of court counts commenced due to a debtor’s examination taken on August 24, 2015 in Blaine County, Idaho. That exam sought information which may have assisted in the collection of part of a domesticated foreign (California) judgment. (R., p. 14 through 20 of 636, and p. 33 of 636, ¶ 12).

C&M and Karlin dismissed 8 of the 10 counts of contempt of court seeking a civil sanction during their closing argument giving at trial. The only remaining civil contempt of court cases were counts 1 and 8. (R., p. 488 of 636) Campbell was given a civil sanction by the Court relating to counts 1 and 8 at the sentencing hearing. (R., p. 603 and 604 of 636) The two civil contempt of court charges have been purged and are not at issue in this appeal.

On February 22, 2016 Campbell signed an Advisement of Rights Regarding Contempt document. (R., p. 150 and 151 of 636) The Advisement of Rights Regarding Contempt form

provided Campbell with the following information. “RIGHTS The purpose of the initial appearance is to advise you of both the charge(s) against you and your rights. You are advised that: . . . You have the right to remain silent (often called the privilege against self-incrimination). You are not required to make a statement and any statement you make can be used as evidence against you at trial. **75(f)(1)(c)** . . . If you choose to admit you are in contempt of the court’s order, you waive your right to silence. (R., p. 150 of 636) Campbell signed the Advisement of Rights Regarding Contempt on February 22, 2016 and acknowledged that “I have read this entire document and I understand it.” (R., p. 151 of 636)

On June 1, 2016 the Order Regarding Appointment was entered by the Court which appointed Lee Ritzau as the attorney for Neil Campbell, the Respondent. Prior to June 1, 2016 Neil represented himself. Mr. Ritzau had just under two months to prepare for trial.

On July 26, 2016 the Court Trial involving 10 counts of civil contempt of court and 24 counts of criminal contempt of court commenced. (Tr. Vol. I of II, p. 10, L. 1- 13).

This contempt of court trial was held over two days, July 26 and 27, 2016. (Tr. Vol. I of II, p. 3, L. 3 and p. 4, L. 3). Petitioners pursued the 10 counts of contempt of court seeking a civil sanction and 24 counts of contempt of court seeking a criminal sanction which are set forth in the Charging Affidavit. The parties and court frequently referred to the 10 counts of contempt seeking a civil sanction as civil contempt of court and the 24 counts of contempt of court seeking a criminal sanction as criminal contempt of court.

During the contempt of court trial, C&M and Karlin sought to call Campbell to the witness stand. (Tr. Vol. I of II, p. 132, L. 11).

Mr. Ritzau objected to C&M and Karlin's attempt to call Campbell to the witness stand and stated as follows:

"MR. RITZAU: Judge, I object on the grounds of the Fifth Amendment right; Article I, Section 13 of the Idaho Constitution; Idaho Code Section 19-3003. Mr. Campbell, under Idaho Rule of Civil Procedure 75(i)(2), he has the right to remain silent." (Tr. Vol. I of II, p. 132, L. 12- 16).

Mr. Ritzau further stated,

"MR. RITZAU: Judge, then we can go to Idaho Rule of Civil Procedure 75(i)(2).

THE COURT: 75(i)(2)?

MR. RITZAU: Correct.

THE COURT: Yes.

MR. RITZAU: 'Trial rights required to impose a criminal sanction. The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights.'

THE COURT: Wait a minute. Let me get there. 75(i)(2). Okay.

MR. RITZAU: (D) the privilege against self-incrimination.

THE COURT: Okay. And Mr. Campbell has the privilege against self-incrimination on

any criminal sanction sought to be imposed. And, ordinarily, in a criminal case that precludes the prosecutor from calling the defendant as a witness for any reason, if it's purely a criminal case. I mean, I've never seen one where the prosecutor - - or seen a criminal case where the prosecutor sought to call the defendant to testify even to ask him his name or to ask him where he lives or something that might be privileged. I think the defendant in a criminal case ordinarily has a right not to testify at all. And I recognize what the rules says, the Court cannot impose a criminal sanction following trial unless the defendant was afforded the privilege against self-incrimination." ( Emphasis Added ) (Tr. Vol. I of II, p. 133, L. 15 - p. 134, L. 16).

The Court required Campbell to take the stand and testify. (Tr. Vol. I of II, p. 160, L. 11-13).

The Court found Campbell guilty of criminal contempt of court on counts 11, 12, 13, 14, 15, 16, 19, 21, 24, 25, 26, 31, and 32. (R., p. 542 of 636)

The Court ordered Campbell to serve 65 days in the Blaine County Jail on the 13 counts of criminal contempt upon which the Court found him guilty. (R., p. 603 of 636).

#### IV. ISSUES PRESENTED ON APPEAL

1. Whether the District Court erred in imposing a Criminal Sanction without honoring Appellant's privilege against self-incrimination as provided by IRCP 75(i)(2)(D) and *Camp v. East Fork Ditch Co., Ltd.*.

**V.  
ARGUMENT**

**1. THE DISTRICT COURT ERRED IN IMPOSING A CRIMINAL SANCTION  
AGAINST CAMPBELL AS IT FAILED TO HONOR HIS RIGHT AGAINST SELF-  
INCRIMINATION.**

**A. FACTS RELATING TO THE RIGHT AGAINST SELF-  
INCRIMINATION ISSUE PROVIDED IN IRCP 75(i)(2)(D).**

Mr. Ritzau stated as follows:

“MR. RITZAU: Judge, I object on the grounds of the Fifth Amendment right; Article I, Section 13 of the Idaho Constitution; Idaho Code Section 19-3003. Mr. Campbell, under Idaho Rule of Civil Procedure 75(i)(2), he has the right to remain silent.” (Tr. Vol. I of II, p. 132, L. 12- 16).

“MR. RITZAU: Judge, then we can go to Idaho Rule of Civil Procedure 75(i)(2).

THE COURT: 75(i)(2)?

MR. RITZAU: Correct.

THE COURT: Yes.

MR. RITZAU: ‘Trial rights required to impose a criminal sanction. The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights:’

THE COURT: Wait a minute. Let me get there. 75(i)(2). Okay.

MR. RITZAU: (D) the privilege against self-incrimination.



THE COURT: Okay. And Mr. Campbell has the privilege against self-incrimination on any criminal sanction sought to be imposed. And, ordinarily, in a criminal case that precludes the prosecutor from calling the defendant as a witness for any reason, if it's purely a criminal case. I mean, I've never seen one where the prosecutor - - or seen a criminal case where the prosecutor sought to call the defendant to testify even to ask him his name or to ask him where he lives or something that might be privileged. I think the defendant in a criminal case ordinarily has a right not to testify at all. And I recognize what the rules says, the Court cannot impose a criminal sanction following trial unless the defendant was afforded the privilege against self-incrimination." (Tr. Vol. I of II, p. 133, L. 15 - p. 134, L. 16).

Over Campbell's objections, the Court permitted C&M and Karlin to call Campbell. "So, what I'm going to go with is he can be called as a witness as long as - - and he can be asked about the civil contempt issues. I think - - like I say, I think that there's a fairly clear demarcation in this case between the civil and criminal contempt issues. I think he can be asked about the civil contempt issues. He can probably take the Fifth Amendment depending on what questions are asked, but a negative inference can be drawn. In other words, it can't be used - - and it can't be used to support an argument that I couldn't comply. That's an affirmative defense." (Tr. Vol. I of II, p. 149, L. 15- 25).

Mr. Ritzau responded to the Court's ruling and stated,

"MR. RITZAU: I agree with that burden, Judge, but I'm going to object, and I just want

to do some things to clarify the record.

This is a combined proceeding, so there are 10 counts of civil contempt and 24 counts of civil - - or of criminal contempt, pardon me.

THE COURT: Right.

MR. RITZAU: Under Idaho Rule of Civil Procedure 75(i)(2), Mr. Campbell has the right to remain silent for the criminal sanctions.

THE COURT: Absolutely. (Tr. Vol. I of II, p. 150, L. 1- 11).

#### **B. STANDARD OF REVIEW.**

“We exercise free review over the issues of law decided by the district court to determine whether it correctly stated and applied the applicable law.” *State of Idaho Department of Health and Welfare v. Slane*, 155 Idaho 274, 276 (2013)

“This Court exercises free review over questions regarding the interpretation of the Idaho Rules of Civil Procedure.” *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 294 P.3d 1111, 1115 (2013).

“We freely review the district court's conclusions of law.” *Duspiva v. Fillmore*, 154 Idaho 27, 31 (2013).

“Idaho Appellate Rule 11(a)(4) allows a direct appeal from an order of contempt. Thus, we review an appeal from an order of contempt the same as any other appeal’ . . . . We review the sanction imposed upon a finding of contempt for an abuse of discretion.” *Carr v. Pridgen*,

157 Idaho 238, 242 (2014).

“To determine whether the district court abused its discretion, this Court asks: (1) Whether the trial court correctly perceived this issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.” *Duspiva v. Fillmore*, 154 Idaho 27, 35 (2013).

**C. THE DISTRICT COURT ERRED IN IMPOSING A CRIMINAL SANCTION OF 65 DAYS IN THE BLAINE COUNTY JAIL AFTER IT REFUSED TO HONOR CAMPBELL’S RIGHT AGAINST SELF-INCRIMINATION.**

The District Court erred in imposing a Criminal Sanction of 65 days in the Blaine County Jail without providing Campbell his right against self-incrimination provided for in IRCP 75(i)(2)(D) and *Camp v. East Fork Ditch Co. Ltd.*

“The distinction between civil and criminal contempt is important because of the federal constitutional rights that the United States Supreme Court has held applicable in nonsummary criminal contempt proceedings. Those rights include notice that a criminal contempt sanction is being sought in the contempt proceedings, . . .; the right to a public trial, . . .; the right to compulsory process, . . .; the right to the presumption of innocence, . . .; the privilege against self-incrimination, . . .; the requirement that contempt be proved beyond a reasonable doubt, . . .; the right to be represented by counsel, . . .; the right to cross-examine witnesses, . . .; the right to call witnesses to testify both in complete exculpation or in extenuation of the offense and in

mitigation of the penalty to be imposed, . . . ; the right to testify in one's own behalf, . . . ; the right to the protection of the exclusionary rule, . . . ; the protection of the Double Jeopardy Clause, . . . ; and the right to speak on one's own behalf, similar to the right to allocution, in order to present matters in mitigation or otherwise attempt to make amends with the court, . . . ; As stated by the United States Supreme Court . . . 'Criminal contempt is a crime in the ordinary sense,' . . . and 'criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings.'" *Camp v. East Fork Ditch Co., Ltd.*, 137 Idaho 850, 860 & 861 (2002).

It appears as if this case was the precursor to much of IRCP 75.

IRCP 75(i)(2) sets forth the rights required to impose a Criminal Sanction and states, "(i) **Nonsummary Proceedings; Trial.** . . . (2) *Trial Rights Required to Impose a Criminal Sanction.* The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights: (A) a public trial, (B) compulsory process, (C) the presumption of innocence, (D) the privilege against self-incrimination, (E) the right to call and cross-examine witnesses, (F) the right to testify in his or her own behalf, (G) the right to exclude evidence that was obtained in violation of the respondent's Fourth Amendment rights, (H) the right to counsel, if applicable, and (I) the right to a unanimous verdict if there was a jury trial." *IRCP 75(i)(2)*.

"[I]f *both* civil and criminal relief are imposed in the same proceeding, then the 'criminal feature of the order is dominant and fixes its character for purposes of review.' . . . A court can

impose a criminal contempt sanction in nonsummary contempt proceedings only if the contemnor has been afforded the federal constitutional rights applicable to criminal contempt of court.” *State of Idaho Department of Health and Welfare v. Slane*, 155 Idaho 274, 277.

“The Constitutional rights applicable to criminal contempt are substantially greater than those applicable to civil contempt. *Camp*, 137 ID at 860-861, 55 P.3d 314-315. In some cases the court could impose either a criminal contempt penalty or a civil contempt penalty, but if the contemnor is not granted the rights applicable to criminal contempt, the judge cannot impose a criminal contempt sanction. *ID* at 861, 55 at 315. Thus the rights granted to the contemnor before and during the hearing can determine the type of sanction (criminal or civil) that can be imposed at the end of the Hearing.” *CONTEMPT*, Hon. Daniel T Eismann, 2016 Edition, Page 12.

“If a contemnor is not granted the constitutional rights applicable to criminal contempt, then the judge cannot impose a criminal sanction. ‘[C]riminal penalties may not be imposed on someone who has not been afforded the protections that the constitution requires of such criminal proceedings, . . . *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 632 (1988)’” *CONTEMPT*, Hon. Daniel T Eismann, 2016 Edition, Pages 12 & 13.

The District Court erred when it imposed a Criminal Sanction against Campbell as Campbell’s privilege against self-incrimination/his right to not take the witness stand was not honored. The District Court made Campbell take the stand and answer questions posed by C&M

and Karlin's counsel. Once Campbell was forced to take the stand the District Court no longer had the ability to impose a Criminal Sanction against him. Under the language of ICRP 75(i)(2)(D) and its associated free standard of review, the District Court could not impose a criminal sanction in this case. Under Camp v. East Fork Ditch Company and its associated abuse of discretion standard of review, the District Court's imposition of a criminal sanction was improper as the imposition of a criminal sanction without providing Campbell his right against self-incrimination was inconsistent with the legal standards applicable to the specific choices available to the District Court pursuant to ICRP 75(i)(2)(D) and/or Camp v. East Fork Ditch Co., Ltd. and State of Idaho Department of Health and Welfare v. Slane.

## **VI. CONCLUSION**

For these reasons, Campbell asks the Court to vacate the District Court's decision imposing a Criminal Sanction of 65 days in jail. Since Campbell was not provided his right against self-incrimination, a Criminal Sanction can not be imposed in this case.

RESPECTFULLY SUBMITTED this 9 day of January, 2018.

NEIL DAVID CAMPBELL

By Neil David Campbell  
Neil David Campbell, Pro Se

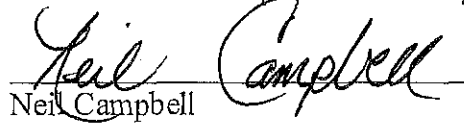
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of January, 2018, I served a true and correct copy of the within and foregoing document upon the following attorneys for Appellant:

Erin Clark  
Lawson, Laski, Clark & Pogue, PLLC  
PO Box 3310  
Ketchum, ID 83340  
Fax: 208-725-0076

       By depositing copies of the same in the United States Mail, postage prepaid.

✓ By depositing copies of the same with Federal Express for overnight delivery.

  
Neil Campbell